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ABSTRACT

The topic of state reappropriation of federal funds for higher education is addressed in this summary of a speech that sought to distinguish between reasonable program control by state legislatures and disruption of needed programs. The issue of a state legislature appropriating federal funds entering the state is before a number of legislatures. The debate centers on principles of government and poses new questions about relationships between state legislative and executive branches of government and between state and federal governments. The Advisory Commission on Intergovernmental Relations drafted a model reappropriations bill that it recommends for adoption by all state legislatures. The intention is to establish within the states a reasonable means for examining the effects of federal funds received by the states for the programs of those states. A concern was to insure that long-term commitments were not made by the states. It is important that state reappropriation laws do not disrupt the ongoing processes of higher education, such as the availability of student aid funds and research efforts of universities. It is suggested that a conscientious effort be made by the states and schools to determine those areas in which reappropriation can be undertaken to increase needed information by the states without disrupting schools. The situations in Pennsylvania and Tennessee are discussed. (SW)

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State Reappropriation of Federal Funds for Higher Education: Reasonable Control or Program Disruption?

A Presentation to the SREB Legislative Advisory Council by Joseph E. Johnson University of Tennessee

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Southern Regional Education Board

Introduction

A few months ago "reappropriation" was a term with little real meaning to legislators, government officials, and educators. Now the issue of a state legislature appropriating federal funds entering the state, thereby "reappropriating" them, is before a number of legislatures and is causing discussion among many groups, including educators.

The issues being debated center on principles of government and pose new questions about relationships between state legislative and executive branches of government and between state and federal governments. The situation is complex and court cases, which may be lengthy, are pending. However, with federal funds now accounting for approximately one-fifth of many state budgets, it is likely that legislatures will continue to seek a way to control, or account more fully for, these funds.

Higher education institutions receive substantial federal monies, particularly for research and student assistance, and have raised many questions about the principles and practicalities of reappropriation and whether this really is a desirable or effective means to achieve accountability. The Advisory Commission on Intergovernmental Relations has drafted a model reappropriation bill which it recommends for adoption by all state legislatures. The decision to adopt a reappropriation bill of some nature and whether to include higher education rests, of course, with the individual legislatures.

Joseph E. Johnson, executive vice president and vice president for development at the University of Tennessee, discussed reappropriation at a recent SREB Legislative Advisory Council seminar. Dr. Johnson, who has served for more than a decade in public higher education finance and federal-state relations, and was formerly director of the budget for the state of Tennessee, sought to distinguish between reasonable program control by state legislatures and disruption of needed programs. Folllowing is a summary of his remarks.

State Reappropriation of Federal Funds for Higher Education: Reasonable Control or Program Disruption?

Joseph E. Johnson
Executive Vice President and Vice President for Development
University of Tennessee

Over the past months shock waves swept through higher education as word spread that the state legislature in Pennsylvania had enacted a law which required that all federal funds to be used in Pennsylvania by any state agency (including funds for public higher education) must be reappro-prated by the legislature of that state.

Concern grew when it was realized that the Pennsylvania action was based on model legislation recommended for all states by the Advisory Commission on Intergovernmental Relations (ACIR). This Commission, which over the past decade and a half has established itself on the forefront of intergovernmental relations, was once again recommending a major shift of authority to the state level. The recommendation called for a shift of authority not to governors, or to the executive branch of government, as had been the case in the late 1960's, but to state legislatures.

In the minds of many in educational circles, ACIR has become a villain proposing a massive power grab by state legislatures, which would further their determination to take over every aspect of the management of colleges and universities within the states.

The American Association of State Colleges and Universities, through the work of the organization's executive vice president for government relations, began a sustained effort to call attention to this alleged activity and to point out a number of inherent problems for state funding of colleges and universities. *Change* magazine reviewed the situation in an article entitled, "Will States' Rights Wrong Education?" Testimony was given before the U.S. Senate Subcommittee on Intergovernmental Relations in June of 1977. At the same time, the National Conference of State Legislatures was calling for enactment of the model legislation by as many states as possible as part of an effort to establish greater fiscal responsibility at the state level. It is in this emotionally-charged atmosphere that aspects of ACIR's recommendations regarding reappropriation must be examined.

First, it is important to note that the object of the Advisory Commission on Intergovernmental Relations was not increased control of higher education by state legislatures. It is important to emphasize this because some segments of higher education have reacted to this proposal as if it were an effort by state legislatures to take over the management of public higher education; that was clearly not the intent of ACIR. The intention of state legislators and of ACIR was to establish within the states a reasonable means for examining the effects of federal funds received by the states for the programs of those

states – a quite legitimate objective. Further, the concern was to insure that long-term commitments were not made by the states either accidentally or without thorough consideration by both the executive and legislative branches of government.

Identification of Federal Funds

As late as a decade ago, state legislators were seldom able even to identify federal funds within the budget of a state, and the appropriation of such funds was in most cases accomplished by a simple notation within the state budget that federal funds could be received and expended by state agencies for the purposes set out in the grants. (It is still basically that way in Tennessee in relation to federal funding for public higher education. There is a sentence in the appropriations bill which says that "all other funds made available to state agencies are hereby appropriated.")

A report of July, 1977 by the National Association of State Budget Officers shows that substantial changes have occurred in this area over the past few years. Forty-eight of the fifty states presently identify federal funds estimates in their budget documents (Map 1). It is significant that in this most general inclusion of federal funds in state budgets 11 states now exclude estimates of federal receipts for higher education.

Forty states do employ some sort of direct reappropriation of federal funds. However, within these forty states, wide variation is found in the specificity with which they reappropriate. Twelve states of this group exempt institutions of higher education from the reappropriation process altogether. There are nine states which appropriate federal funds exclusively by agency, while as many as twelve states appropriate by specific objects of expenditure. Map 2 summarizes the extent of reappropriation in the SREB states.

Problems in Reappropriation

All this shows clearly that the reappropriation of federal funds and the desire for increased state knowledge and control of program commitments made in response to federal funding are matters of growing interest to state legislatures. It is when this general desire is applied to specific programs of federal aid to higher education that problems begin to develop. These problems become extremely acute if a single standard is applied uniformly to all such federal programs.

Pennsylvania institutions, operating under what is probably the most stringent reappropriation law in the country, have noted a number of problems. Perhaps most significant among these is that in 1976 and 1977 federal student aid monies were not available for students when the fall term started because the reappropriation process had not been completed within the state. As of December, 1977, no appropriation had been made for public higher education.

It is reported that at least one Pennsylvania institution has lost a major National Science Foundation grant because of delays in reappropriation.

Research grants which, technically, are often made to an institution, but in fact are made to a specific researcher within the institution, are frequently granted on very short and very specific deadlines by the federal

Identification of Federal Funds in State Budget Documents, 1977

MAP 1

All federal fund estimates identified in budget documents

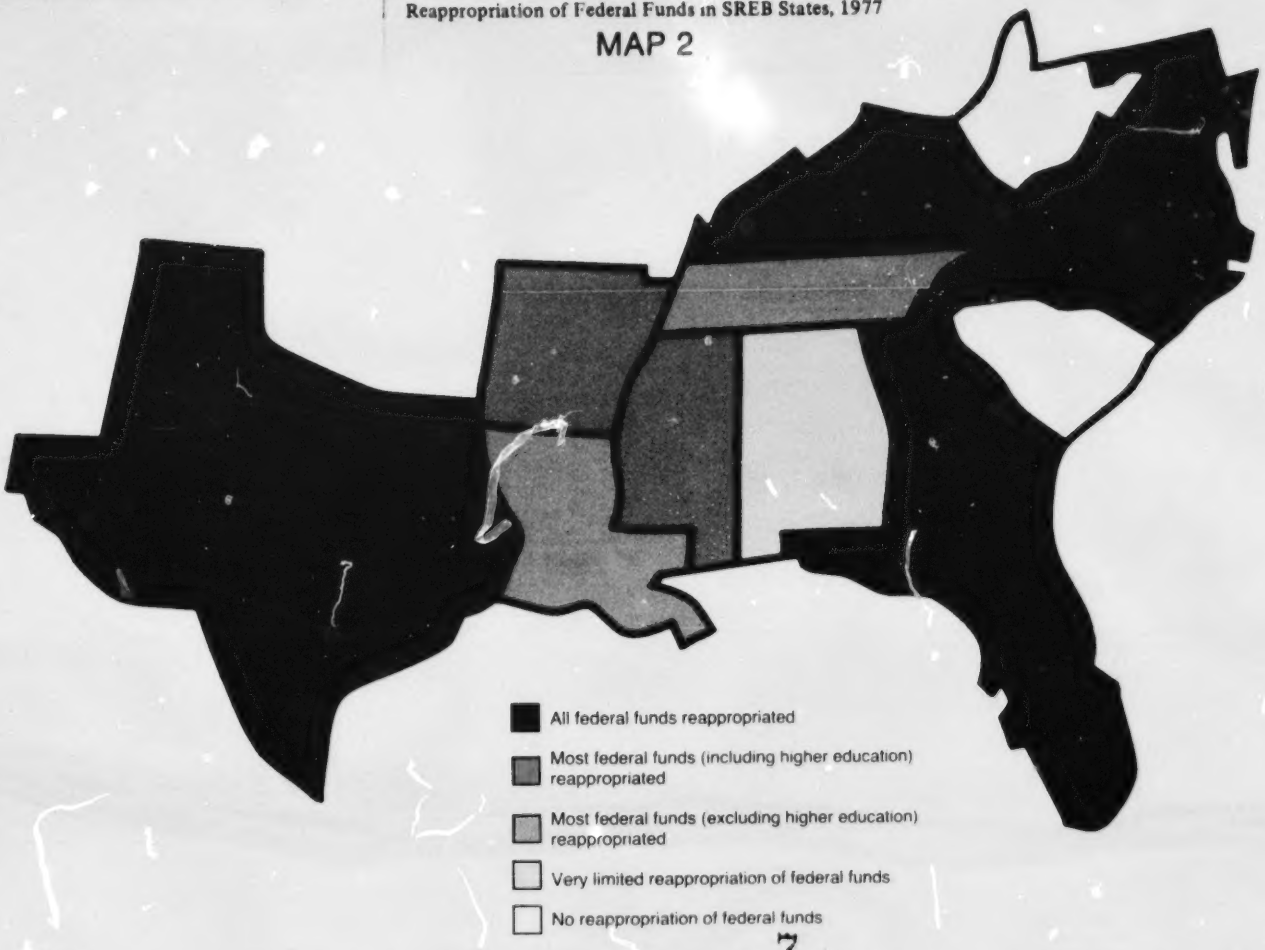
Federal fund estimates, except for higher education, identified in budget documents

Federal fund estimates not identified in budget documents

SOURCE: National Association of State Budget Officers, *Federal Funds Budgetary and Appropriation Practices in State Governments*, Preliminary Report, July 1977.

Reappropriation of Federal Funds in SREB States, 1977

MAP 2


All federal funds reappropriated
Most federal funds (including higher education) reappropriated
Most federal funds (excluding higher education) reappropriated
Very limited reappropriation of federal funds
No reappropriation of federal funds

SOURCE: National Association of State Budget Officers, *Federal Funds Budgetary and Appropriation Practices in State Governments*, Preliminary Report, July 1977.

government. The project period for carrying out such grants is generally specified as part of the grant and leaves little flexibility in time for performance. Such grants would be greatly endangered if substantial delays were encountered because the legislature did not happen to be in session at the time the application was due, or was for any reason unable to act quickly to permit the expenditure of funds.

I feel it is also extremely important that neither student financial aid funds nor funds for research in higher education make commitments for the state beyond the life of the grant at hand. Such research projects and student aid funds generally are made up almost exclusively of federal funds that are designed to carry out a specific program for a specific length of time and then to terminate.

Application to Higher Education Funds

Examination of the model legislation which prompted the present activity indicates that ACIR, while not specifically identifying, does recognize the difficulties of applying the general appropriation principle to higher education funds. The recommendation, in fact, suggests that consideration be given to a blanket exemption of funds going into colleges and universities.

From the point of view of higher education, this would be the most desirable alternative in relation to reappropriation. However, it is clear that such an exemption might not meet the needs of state legislatures as they attempt to achieve greater fiscal control over state programs. The American Association of State Colleges and Universities has suggested that a reasonable alternative might be the examination of federal programs with an eye toward exempting only programs like student aid and research, which do not involve long-term commitments of state funds, while reappropriating those funds which do imply such a commitment.

Admittedly, this approach is not as clear-cut or as simple as a blanket inclusion or exclusion of all federal funds coming into a state, but does have the advantage of increasing state legislative information and control over the commitment of state funds while insuring sufficient flexibility to maintain needed programs within colleges and universities. It has been suggested, for example, that Mining and Minerals Resources Institute legislation recently enacted by Congress and contained in the new strip mining act (which requires a continuing 50 percent match by the state for a long-term program within a university) should be subject to reappropriation, while student aid funds which pass through the institution on the way to the student might well be exempted.

Objections to Reappropriation

Two corollary objections to reappropriation of federal funds by state legislatures have emerged. The most interesting of these has been raised in a Pennsylvania case, *Shapp* v. *Sloan*, which argues that the Pennsylvania legislature gave to itself a veto power over all federal grants to the state and that in doing so it violated the federal supremacy clause of the U.S. Constitution as established in *McCulloch* v. *Maryland*. It is clear that the Senate Subcommittee on Intergovernmental Relations of the Government Relations Com-

mittee is extremely interested in whether or not state reappropriation legislation would allow the thwarting of the will of Congress by stopping federal programs within any state. One proposal which has been put forward is that Congress modify certain federal legislation by indicating that it is not subject to reappropriation by state legislatures. Such an action would seem to initiate a constitutional test which is likely to be settled only by the Supreme Court.

Reflections Drawn from Experiences in One State

With the backdrop of having spent four or five years as director of the budget for the state of Tennessee, and now having spent some twelve or thirteen years in public higher education with responsibility in the area of finance and in federal relations and state legislative relations, I would like to offer some thoughts on this subject as applied to the state of Tennessee.

First, attention should be called to some practical and political problems in connection with a wholesale application of reappropriation to public higher education and possibly some other areas of state government.

Coordination of State and Federal Fiscal Years. One of the first problems is the lack of coordination of the state fiscal year and the federal fiscal year. The Tennessee fiscal year is July to June; the federal people are now picking up in October. We have started our budget process for 1978-89; it started in June and, by mid-December as far as the executive side of state government is concerned, our budget is fairly final. Our legislature will take final action sometime between April 15 and May 15. Now that is several months before the federal government gets around to determining what money it is going to appropriate, what authorizations will be made (and what appropriations within those authorizations).

We can put a budget together in Tennessee that arrives at a figure for federal funds for higher education, but this might be changed very dramatically by Congress six to eight to nine months later, which, I think, could cause some problems if we have to arrive at definitive figures. For example, how would the Tennessee legislature be able to arrive at a dollar level amount for the federal capitation funds for medical and dental schools? We would have had to have made that decision for this year almost a year ago, and Congress has not at this date made its decision on that particular item. That is one example of a problem that we would have.

Delayed Reaction Time. Another kind of problem that would arise if the reappropriation process had to be specific would be: How would public higher education react to new federal programs and proposals? In Washington, I think it sometimes happens that somebody picks up the phone, calls one of our professors and says, "We've got some money for cancer research in the area of renal diseases. We've got about $250,000 that has to be allocated in two months. Could you put together a proposal?" And quite often we do. At our medical center in Memphis we have about a 50 percent batting average of success on those kinds of responses. If we were bound in by a reappropriations process, and this occurred, say, in April, (and our legislature doesn't come back into session until January) I think again we would have some coordination problems that could hamstring a part of public higher education during the interim period.

Conflicting Accountability Requirements. Another kind of issue is illustrated by the Univeristy of Tennessee. Last year we processed, expended and received some $40 million in federal grant and contract funds – ranging from $100 for an education professor to go down and advise a small school district on how to reorganize the superintendent's office to $9.5 million for a magnetohydrodynamic coal research project which will, if it works, increase the production of energy from coal by 50 percent. If you have to make line item appropriations, I think it would be totally impossible to arrive at these kinds of estimates.

Several years ago I was doing a study for the Southern Association of Colleges and Schools and was visiting the Louisiana budget office. I encountered a situation which illustrates the difficulties in evaluating the appropriations of proposed grants. They had assigned an analyst to review all the grants and contracts for LSU to determine whether or not LSU ought to be allowed to accept them. This young man, whose background was in either political science or public administration, was dealing with whether or not LSU ought to accept a $10,000 grant to study the soybean sysnematode. Having been a budget analyst, I was sympathetic regarding his predicament in making a decision on whether LSU ought to accept that money. I'm within higher education now, and I would find it difficult to make that decision. I think you put somebody, be he a legislative budget staff member or an executive branch budget member, in an almost impossible position by assigning those kinds of responsibilities.

Upperhand for Private Institutions. Another kind of practical problem (in addition to the coordination of fiscal years and the different requirements for budgetary accountability between the federal government and the state government) is that the private higher education institutions within the state, who are of course not subject to reappropriation, could ignore the entire reappropriation process and go right ahead and apply for and receive federal funds while their public counterparts could not. And then, as I mentioned earlier, there's the need for spur of the moment reaction when new federal legislation is proposed. For example, in September of last year we got a call from a federal agency which said it had about $4 million available for dormitory innovation in the state of Tennessee. We were able to make a decision enabling us to accept and expend that money. If we had had to go through a reappropriation process, we probably could not have gotten those funds because they would have had to be obligated prior to December 30, as far as the federal government was concerned.

Solutions to the Issue

I think there may be some reasonable solutions to this issue short of wholesale acceptance of reappropriation as it relates to public higher education. First, I would suggest that if you have a sound state financing process, call it "formula" or "procedure" or whatever, then I believe the reappropriation issue can be addressed through that process.

In Tennessee, federal funds are largely ignored in arriving at state appropriations for public higher education. In that funding process the assumption is made that the institution is responsible for federal funding and the state makes no commitment to continue it. We receive our state funds and we in

effect take our gamble with federal funds. I believe that negates the issue, basically, of higher education accepting federal funds and creating a continuing commitment. It is important to remember that in our state we do not, for example, put faculty members on the tenure track who are on "soft money" — who are on federal or foundation money. Those faculty members working on soft money cannot acquire tenure, and that helps to obviate a commitment, at least for the faculty members, whose salary expenses constitute about 75 percent of expenditures.

I believe also, in addition to working through the issue of greater control and accountability through the funding process, that state legislative and executive officials could assure clarity on the front end, either by legislative statements or by legislative resolutions telling higher education explicitly that no responsibility for continuing commitments is assumed.

Existing Legislative Leverage. I have the impression that nobody other than the legislature itself can commit a legislative body to anything. In our state we quite often make the comment that one legislative session cannot commit another to funding. It would seem that if there is one very simple way to deal with higher education officials who do enter into federal programs that constitute continuing commitments, then the legislature very definitely has the leverage to say funds will not be appropriated for continuation. Tennessee is on zero-base budgeting and PPBS and all those fancy things which really call for a more sophisticated kind of budgeting. If in our funding process, we do ask for money to continue a federal program whose funding has ended, we have to identify it very clearly, point it out, and both the executive and legislative branches of government must make a determination on whether to continue funding from state funds for that particular project.

Also, I think that, from a practical point of view, student aid funds coming to higher education and virtually all the research funds do not within themselves create a continuing commitment. If all federal student aid funds (some $12 million last year) were cut off by the federal government tomorrow, we would have no way in the world of continuing those and would not expect to do so. We would simply have to tell the students and their parents "The money is not there any more." And, the $40 million of research grants and contracts involves basically the same thing — if all those were cut off we would have the obligation of laying off the people and terminating the the programs if we couldn't find other federal grants to replace them.

I believe state government, with a sophisticated state post-audit operation, can determine whether or not higher education is "fudging" on any program. If we are gradually shifting federal obligations over to the state side of the ledger, I believe a good strong post-audit program can make discoveries of that kind.

I also think the basic budgeting process ought to be able to make such determinations. Furthermore, in some cases the need for reappropriation can be lessened by requiring good solid information from higher education on what it is doing with federal funds and what kinds of commitments are being made. I have always made the assumption, in Tennessee, that we in

public higher education cannot commit the state or the legislature or the appropriations process to anything.

Continued Vigilance Needed. There is a tremendous need for both the executive and legislative branches of state government to take a much harder look and be much more actively involved in what is going on with federal funds. It would appear to me that legislators and governors have a responsibility to look very carefully at the programs federal funds are proposed to initiate and continue, and to make decisions as to whether or not a state wishes to embark on a program. I think that is quite important, because a state can initiate a program with federal funds which the people may not agree with or accept. Legislators need to make decisions in those areas.

Conclusion

In summary, the present action for reappropriation of federal funds is seen as an effort by state legislatures to establish reasonable control over the federal influence on state program activities as that influence is exerted through the federal grant-in-aid process. It should not be interpreted exclusively as a part of the move by state legislatures to demand increased accountability by higher education administrators.

It is extremely important to note, however, that unless state reappropriation laws are carefully and thoughtfully drawn, they can be highly disruptive to the ongoing processes of higher education. It is clear that a poorly-drawn state law can threaten the extremely important student aid funds and jeopardize research efforts of universities.

It is suggested therefore that, instead of dismissing reappropriation as a device to end higher education as we have known it, a conscientious effort be made jointly to determine those areas in which reappropriation can be undertaken to increase needed information by state legislatures without doing damage to higher education programs.